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**Federal Communications Commission  
Office of Secretary**

On July 9, 2004, the FCC issued a *Report and Order* in this docket granting NNB's Counterproposal.<sup>1</sup> The date for seeking reconsideration of this decision has long since passed, and, to date, no party has sought review of NNB's Counterproposal or any aspect of the Portland portion of the proceeding. Many pleadings have been filed, however, challenging the Seattle portion of the proceeding.<sup>2</sup> These filings prevent the entire decision, including the Portland

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<sup>1</sup> As described in paragraphs 9, 12, 13, 14, 15, 16, and 18 of the Report and Order, NNB's Counterproposal proposed to substitute Channel 226C3 for 225C1 at Astoria, Oregon, and reallocate Channel 226C3 to Gladstone, Oregon, as its first local service for use by KAST-FM; to substitute Channel 230C2 for Channel 229C in Portland, Oregon at a new reference site for KPDQ-FM; to substitute Channel 232C3 for Channel 231C3 in Tillamook, Oregon for KTEL-FM; to substitute Channel 227C for Channel 226C in Springfield-Eugene, Oregon for KGNU(FM); to substitute Channel 225A for Channel 228A in Coos Bay, Oregon, for KDCQ(FM); to substitute Channel 224A for Channel 232A in Long Beach, Washington at a new reference site for KAQX(FM); to allocate Channel 228C3 at Manzanita, Oregon, as its first local service; to allocate Channel 259A at Ilwaco, Washington as its second local service; and to allocate alternate Channel 236A at Trout Lake.

<sup>2</sup> Application for Review filed by Triple Bogey, LLC, *et al.* (Aug. 20, 2004); Petition for Reconsideration filed by Mercer Island School District (Aug. 20, 2004); Motion for Leave to File Supplement to Petition for Reconsideration filed by Mercer Island School District (Aug. 31, 2004); Supplement to Petition for Reconsideration filed by Mercer Island School District (Aug. 31, 2004); Opposition to Application for Review filed by Mid-Columbia Broadcasting, Inc. and First Broadcasting Investment Partners, LLC (Sept. 7, 2004); Opposition to Application for Review filed by Saga Broadcasting, LLC (Sept. 7, 2004); Motion for Stay filed by Mercer Island School District (Sept. 8, 2004); Opposition to Motion for Leave to File Supplement to Petition for Reconsideration filed by First Broadcasting Investment Partners, LLC (Sept. 15, 2004); Opposition to Motion for Stay filed by Mid-Columbia Broadcasting, Inc. and First Broadcasting Investment Partners, LLC (Sept. 22, 2004); Reply to Opposition of Saga Broadcasting, LLC filed by Triple Bogey, LLC, *et al.* (Sept. 22, 2004); Reply to Opposition of Joint Petitioners filed by Triple Bogey, LLC, *et al.* (Sept. 22, 2004); Reply to Opposition to Motion for Leave to File Supplement to Petition for Reconsideration filed by Mercer Island School District (Sept. 23, 2004); Opposition to Petition for Reconsideration filed by Mid-Columbia Broadcasting, Inc. and First Broadcasting Investment Partners, LLC (Sept. 27, 2004); Reply to Opposition to Motion for Stay filed by Mercer Island School District (Oct. 4, 2004); Reply to Opposition to Petition for Reconsideration filed by Mercer Island School District (Oct. 12, 2004); Motion for Leave to Supplement Reply to Oppositions of Joint Petitioners and Supplement filed by Triple Bogey, *et*

portion of the proceeding, from becoming final, and the large number of post-decision filings portend a delay in attaining finality for years.

As shown in the engineering statement of Herman E. Hurst, Jr. appended as Exhibit A, NNB's Counterproposal is clearly, from a technical standpoint, separate and independent from the Seattle portion of this proceeding.<sup>3</sup> In the July 9 *Report and Order*, the FCC recognized that these two proceedings became segregable and distinct because of the allotment of an alternate channel to Trout Lake.<sup>4</sup> As the FCC explicitly found, "there is no longer any conflict between the New Northwest Counterproposal and any proposal in this proceeding."<sup>5</sup>

In addition to the many requests for review of the Seattle portion of the proceeding, that aspect has also been the subject of intense political controversy.<sup>6</sup> None of the issues raised by the pending Seattle-related pleadings or the calls for Congressional action, however, implicates NNB's Counterproposal. Indeed, an application for review filed by Triple Bogey, LLC, *et al.*, one of the Seattle litigants, specifically disavows any connection between its issues and NNB's

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*al.* (Dec. 1, 2004).

<sup>3</sup> The attached Statement of Herman E. Hurst, Jr., was appended to a Motion for Severance of Counterproposal, filed by NNB on June 10, 2004. In its July 9, 2004 *Report and Order*, the FCC found that severance, at that time, was unnecessary because the decision granted NNB's Counterproposal and terminated the proceeding.

<sup>4</sup> *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Arlington, The Dalles, Moro, Fossil, Astoria, Gladstone, Portland, Tillamook, Coos Bay, Springfield-Oregon, Manzanita and Hermiston, Oregon, and Covington, Trout Lake, Shoreline, Bellingham, Forks, Hoquiam, Aberdeen, Walla Walla, Kent, College Place, Long Beach, and Ilwaco, Washington, Report and Order*, DA 04-2054, 2004 FCC Lexis 3728, ¶ 18 (July 9, 2004).

<sup>5</sup> *Id.*

<sup>6</sup> *See, e.g.*, FCC Order Could Doom Mercer Island High's Radio Station," Seattle Post-Intelligencer, July 10, 2004, available at [http://seattlepi.nwsourc.com/local/181626\\_station10.html](http://seattlepi.nwsourc.com/local/181626_station10.html) (last visited Dec. 10, 2004).

Counterproposal.<sup>7</sup> Pleadings filed by the Mercer Island School District, near Seattle, also similarly demonstrate by their arguments that they have no connection to NNB's Counterproposal. There can be no doubt that the conclusion reached in the *Report and Order* – “there is no longer any conflict between the New Northwest Counterproposal and any proposal in this proceeding” – was and remains valid.

Even though the pending Seattle review pleadings do not implicate NNB's Counterproposal, their pendency nonetheless causes significant delay in NNB's Counterproposal attaining legal finality. In the July 9 *Report and Order*, the FCC found that the principal component of NNB's Counterproposal, substitution of Channel 226C3 for Channel 225C1 and reallocation of Channel 226C3 from Astoria, Oregon, to Gladstone, Oregon, served the public interest by providing first local service to residents of the Gladstone area. In addition, the July 9 *Report and Order* approved the addition to the Table of Allotments of three channels for which new permittees may apply.

Only if NNB's Counterproposal is severed from the rest of MB Docket 02-136 will these changes, which the FCC found to be in the public interest, have any likelihood of being implemented in the near future. Severance of the proceeding is necessary to expedite the provision of expanded service to the public and ensure that all necessary steps are taken to implement the changes. Moreover, such action will allow the FCC staff, on review, to focus only on the Seattle component of the proceeding, helping to preserve FCC administrative resources. Without severance, the provision of new and improved service approved in the July 9 *Report and*

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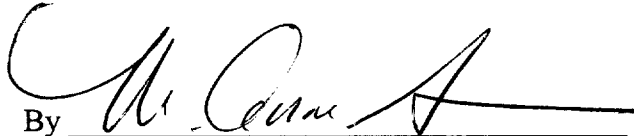
<sup>7</sup> Application for Review filed by Triple Bogey *et al.* at p. 2, n. 2 (Aug. 20, 2004).

*Order* will be delayed on the basis of legal and political controversy wholly unrelated to NNB's Counterproposal, thereby disserving the public interest.

In view of the foregoing, it is requested that this Motion for Severance be granted.

Respectfully submitted,

NEW NORTHWEST BROADCASTERS LLC

By 

M. Anne Swanson  
Nam E. Kim

Its Attorneys

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December 10, 2004

## **EXHIBIT A**



**STATEMENT OF HERMAN E. HURST, JR.  
IN SUPPORT OF A MOTION TO SEVER  
A COUNTERPROPOSAL IN MB DOCKET NO. 02-136**

**Prepared for: New Northwest Broadcasters, LLC**

I am a Radio Engineer, an employee in the firm of Carl T. Jones Corporation with offices located in Springfield, Virginia. My education and experience are a matter of record with the Federal Communications Commission.

This office has been authorized by New Northwest Broadcasters, LLC ("New Northwest") to prepare this statement in support of a Motion to Sever a Counterproposal (RM-10668) filed by New Northwest as Comments in MB Docket No. 02-136. Counterproposals in MB Docket 02-136, proposing numerous additional or alternate channels and/or allotments were also filed by Triple Bogey, LLC ("Triple Bogey"); Mid Columbia Broadcasting, Inc. et al ("Mid Columbia"); and Two Hearts Communications, LLC ("Two Hearts").

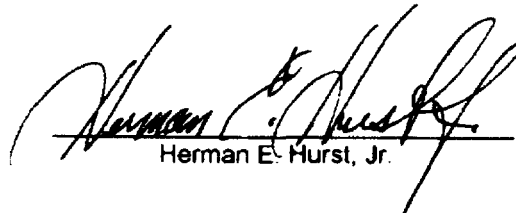
An engineering review of all the counterproposals revealed that New Northwest's proposed arrangement of allotments is compatible (i.e. satisfies the minimum distance spacing requirements of Section 73.207 of the FCC Rules) with the allotments and assignments proposed by all other counter-proponents, with the exception of the proposed addition of Channel 226A at Trout Lake, WA (advanced in the original Notice of Proposed Rulemaking). New Northwest proposed an alternate Channel 236A at Trout Lake. Substituting the New Northwest alternate Channel 236A at Trout Lake would eliminate any

STATEMENT OF HERMAN E. HURST, JR.  
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conflict between the New Northwest counterproposal and all other proposals (both the original and the counterproposals) filed in MB Docket No. 02-136. On May 28, 2004, the Media Bureau Audio Division released a Report and Order in MM Docket 02-136 (DA 04-1540), which was set aside by an Order released June 8, 2004 (DA 04-1647). While the Report and Order which has been set aside did not make an allotment to Trout Lake, Channel 236A remains available for allotment to Trout Lake should the FCC now or in the future determine that the public interest would be served by such an allotment. Adoption of the New Northwest counterproposal, as was done in the now set aside May 28 Report and Order, in no way limits in an engineering manner, the Commission's consideration and disposition of the other proposals made in this proceeding.

This statement was prepared by me and is believed to be true and correct, under penalty of perjury.

DATED: June 10, 2004

  
Herman E. Hurst, Jr.



### CERTIFICATE OF SERVICE

I, Connie Randolph, a secretary at Dow, Lohnes & Albertson, PLLC, hereby certify that a true and correct copy of the foregoing "Motion for Severance of Counterproposal" was sent on this 10th day of December, 2004, via first-class United States mail, postage pre-paid, to the following:

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\*denotes hand delivery

  
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